

**§ 204.34 Employee response.**

(a) *Introduction.* An employee must respond to a pre-offset notice, if at all, within 15 calendar days following receipt, in one or more of the ways discussed in § 204.34, Employee response, and § 204.35, Petition for pre-offset hearing. Where applicable, the employee bears the burdens of proof and persuasion.

(b) Responses must be submitted in writing to the program official who signed the pre-offset notice. A timely response will stay the commencement of collection by salary offset, at least until the issuance of a written decision. (See § 204.37, Extensions of time). Failure to submit a timely response will be treated as an admission of indebtedness, and will result in salary offset in accordance with the terms specified in the pre-offset notice.

(c) A response filed after expiration of the 15 day period may be accepted if the employee can show that the delay was due to circumstances beyond his or her control or failure to receive notice of the time limit (unless otherwise aware of it).

(d) *Voluntary repayment agreement.* An employee may request to enter into a voluntary written agreement for repayment of the debt in lieu of offset. It is within the discretion of the program official whether to enter into such an agreement, and if so, upon what terms. Voluntary deductions may exceed 15 percent of the employee's disposable pay. If an agreement is reached, the agreement must be in writing, and must be signed by both the employee and the program official. A signed copy must be sent to the Comptroller's office. The program official shall notify the employee in writing of its decision not to accept the proposed voluntary repayment schedule before making any deductions from the employee's salary.

(e) *Waiver.* Any request for waiver of the debt must be accompanied by evidence that the waiver is authorized by law.

(f) *Reconsideration.* An employee may request reconsideration of the existence or amount of the debt or the offset schedule as reflected in the pre-offset notice. The request must be accompanied by a detailed narrative and sup-

porting documentation as to why the offset decision is erroneous and/or why the offset schedule imposes an undue hardship.

**§ 204.35 Petition for pre-offset hearing.**

(a) The employee may petition for a pre-offset hearing. The petition must state with specificity why the employee believes the agency's determination is in error.

(b) The petition must fully identify and explain, with reasonable specificity, all the facts, evidence and witnesses, if any, that the employee believes support his or her position. The petition must be signed by the employee.

**§ 204.36 Granting of a pre-offset hearing.**

(a) If the employee timely requests a pre-offset hearing or the timeliness is waived, the program official must:

(1) arrange for a hearing official. If the hearing official is an administrative law judge, he or she shall be designated by the Chief Administrative Law Judge as set forth in 17 CFR 200.310(a)(2); and

(2) provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(b) The hearing official shall notify the employee by personal service, by first class, registered or certified mail, or by a reliable commercial courier or overnight delivery service whether the employee is entitled to an oral or "paper" (i.e., a review on the written record) hearing. (See 4 CFR 102.3(c).) Within 20 calendar days of receipt of this notice the employee shall provide the hearing official with a full description of all relevant facts, documentary evidence, and witnesses which the employee believes support his or her position. The hearing official may extend the time for the employee to respond to the notice for good cause shown.

(c) If an oral hearing is scheduled, the hearing official shall notify the program official and the employee in writing of the date, time and location